Editor's note: appeal filed, sub nom. Coast Range Assoc. v. Shuford, Civ.No. 98-819-JO (D.Or. July 7, 1998)

FRIENDS OF THE NESTUCCA
COAST RANGE ASSOCIATION

IBLA 98-6 Decided June 22, 1998

Appeal from a decision of the Tillamook Resource Area Manager, Bureau of Land Management, to restore two roads and replace two bridges. Environmental Assessment Nos. OR 086-97-09 and OR 086-97-11.

Affirmed.

1. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

A Finding of No Significant Impact will be affirmed with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. A party challenging the determination must show that it is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party. Mere differences of opinion provide no basis for reversal.

APPEARANCES: Les Helgeson, President, Friends of the Nestucca, Beaver, Oregon, and Chuck Willer, Director, Coast Range Association, Corvallis, Oregon, for Appellants; Dana R. Shuford, Tillamook Resource Area Manager, Tillamook, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

The Friends of the Nestucca and the Coast Range Association have appealed from the Decision Record and Finding of No Significant Impact issued on August 26, 1997, by the Area Manager, Tillamook Resource Area, Bureau of Land Management (BLM), approving restoration of two existing roads and replacement of two bridges in Tillamook County and Yamhill County, Oregon, and implementing the proposed actions described in Environmental Assessment (EA) No. OR 086-97-09, "Restoration of the Nestucca

River and Bible Creek Access Roads," and EA No. OR 086-97-11, "Nestucca Access Road Bridge Replacement," as modified by mitigative measures and design features set forth in the Decision.

We granted Appellants' Petition for Stay of BLM's Decision by Order dated November 14, 1997, and have expedited our review at BLM's request. Our decision makes it unnecessary to rule separately on BLM's May 28, 1998, Petition for Release of the Stay.

BLM's Decision describes the projects:

> Approximately 53 culverts would either be replaced, repaired, modified or an overflow added. Approximately thirteen culvert inlets would be cleaned or reconstructed. Six locations would have restoration to benefit fish. Windthrown trees, adjacent to the road, would be placed in the flood plain for fish habitat and riparian values. Flumes would be added to approximately 15 culverts. Guard rails and posts would be replaced.
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> Narrow segments within a 2.6 mile gravel section on the Nestucca Access Road would be widened. The gravel surface would be removed, replaced with a higher quality rock, asphalted, and chip sealed.
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> Approximately 40 slumps would be reconstructed or repaired using a combination of four methods. 20.9 miles of the Nestucca Access Road and 5.2 miles of the Bible Creek Access roads would be chip-sealed to their existing width over their current asphalt surface. The total miles to be resurfaced would be approximately 26.1 miles.
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> Two single lane bridges will be replaced with new double lane spans meeting current loading standards. The spans would be approximately 150 feet in length at the Nestucca River Bridge (Station #873 which is near Alder Glen Campground) and approximately 80 feet in length at the Elk Creek site.

(Decision at 20, Attachment A.)

In early June 1997, the U.S. Fish and Wildlife Service (FWS), Oregon State Office, wrote BLM concerning the scoping of issues to be addressed in the environmental analysis conducted for these projects under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4331 (1994). The FWS stated it learned about BLM's proposed Nestucca River road projects in the process of coordinating with the Federal Highway Administration (FHA) about impact assessment of FHA's Blaine Road project, which "is contiguous with Nestucca River Road and is immediately adjacent to the Nestucca River." 1/

1/ Letter of June 3, 1997, from Russell D. Peterson, State Supervisor, FWS, to Dana Shuford, Area Manager, Tillamook Resource Area, BLM.

The FWS said it was "particularly concerned about cumulative impacts within the Nestucca watershed." Id. at 3.

> We are also aware of similar or related BLM projects including bridge replacement at Alder Glen and Elk Creek, realignment of the eastern end of Nestucca River Road, and Emergency Flood Repair activities. We believe that the cumulative effects of these projects, particularly impacts to water quality and riparian reserves, should be rigorously evaluated during the NEPA process. We believe the most straight[-]forward means of ensuring appropriate analysis of the cumulative effects of these projects is to evaluate them in a single NEPA process in partnership with [FHA].

Id.

FWS noted that "the Council on Environmental Quality (CEQ) recently published a handbook for assessing cumulative effects entitled Considering Cumulative Effects Under the National Environmental Policy Act." 2/ "The section of the handbook addressing scoping for cumulative effects (Chapter 2) outlines a four step process. Each step, and our recommendations for applying that step to biological resources, is enumerated below:

> Step 1: Identify the significant cumulative effects issues associated with the proposed action and define the assessment goals. * * * [3/]

2/ Considering Cumulative Effects Under the National Environmental Policy Act, CEQ, Executive Office of the President, January 1997. The preface states: "This handbook * * * introduces the NEPA practitioner and other interested parties to the complex issue of cumulative effects, outlines general principles, presents useful steps, and provides information on methods of cumulative effects analysis and data sources. The handbook does not establish new requirements for such analyses. It is not and should not be viewed as formal CEQ guidance on this matter, nor are the recommendations in the handbook intended to be legally binding." Id. at iii.

3/ "The significant cumulative effects issues that should be evaluated in NEPA assessments include:

"a. sediment loading and its effects on salmonids specifically and the aquatic ecosystem in general, particularly considered cumulatively with existing temperature and in stream structure deficiencies;

"b. disturbance and fragmentation of riparian reserves and the effects on water quality (temperature, sediment loading), recruitment of large wood and other sources of structural complexity into the aquatic ecosystem, and the riparian reserves' function as a dispersal habitat for terrestrial species;

"c. construction noise and its effects on noise-sensitive species using adjacent riparian and late-successional habitats; and

Step 2: Establish the geographic scope for the analysis. * * *

Step 3: Establish the time frame for analysis. * * *

Step 4: Identify other actions affecting the resources, ecosystems, and human communities of concern.

Id. at 3-4.

The BLM's Environmental Analysis

BLM did not issue an EA in partnership with the FHA. Rather, on June 17 and 23, 1997, respectively, BLM issued EA No. OR 086-97-11 concerning the Nestucca Access Road Bridge Replacement and EA No. OR 086-97-09 concerning Restoration of the Nestucca River and Bible Creek Access Roads.

EA No. OR 086-97-09 concerning the restoration of the roads states that it is tiered to the May 1995 Salem District Resource Management Plan (RMP). (EA at 1.) It states the purpose of the project is to "restore conditions of the two roads to meet applicable construction and public safety standards; to minimize sedimentation in accordance with applicable standards; and to improve fish passage in locations where it is currently limited." Id. at 2. The intent is to further attainment of the Aquatic Conservation Strategy (ACS) adopted under the Northwest Forest Plan. Id.

The EA listed four BLM road repair activities in the Nestucca River and Yamhill River watersheds (including the replacement of bridges described in EA No. OR 086-97-11) and two FHA road repair activities in the Nestucca River watershed. It stated that although these activities were not included in the EA, "the cumulative effects of these activities along with this proposed [road restoration] action will be considered in developing this EA." Id.

The roads are part of the infrastructure BLM needs to manage resources in the area. Id. at 3. The 1995 RMP states that "reconstructing roads and associated drainage features that pose a substantial risk" is one means of achieving the ACS. Because of limited budgets, the roads have not been consistently maintained. If they are not restored, sedimentation would likely increase. In addition, some culverts are too small for a 100-year flood and hinder fish passage. These factors "pose a substantial risk to the environment," the EA states. The roads do not meet their original or current standards and therefore pose public safety concerns as well. Id. at 4; see also id. at 6-7.

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fn. 3 (continued)

"d. fishing pressure, trampling riparian vegetation, traffic noise, corvid attraction, and other types of disturbance and habitat degradation resulting from the increased human presence facilitated by road improvements."

(Letter of June 3, 1997, from Russell D. Peterson, State Supervisor, FWS, to Dana Shuford, Area Manager, Tillamook Resource Area, BLM, at 4.)

In describing the affected environment, the EA says that the 21.5 miles of the Nestucca River road and the 5.2 miles of the Bible Creek road that are under BLM management are used by the public "for recreation, cross country access, and access to federal lands." Id. at 5. The Nestucca River road "runs in an east to west direction connecting with county roads on each end making it a through route between the Oregon Coast and the Willamette Valley." Id. at 4. It is "often only 30 or so feet above the river's elevation." Id. at 5.

The Nestucca River is designated under the Oregon Scenic Waterways Act. "Although Federal agencies managing the Federal lands are not legally compelled to comply with the State's administrative rules, it is BLM policy that we confer with the State so as to attempt to ensure the agency's actions are compatible with the State's objectives, if at all possible." Id. Under the RMP, BLM is managing this segment of the river "to protect those qualities which would maintain the tentative classification of `Recreational' under the [National Wild and Scenic Rivers System]." Id. at 6.

The road restoration project area is within designated critical habitat for the marbled murrelet and the northern spotted owl, both threatened species under the Endangered Species Act (ESA), and within 2.5 miles of the nest of a northern bald eagle, another threatened species. Id. at 8-9. The area is also within the ecologically significant unit (ESU) designated for Oregon Coast steelhead trout, a proposed species, and within a key watershed for conservation or restoration of anadromous salmonids. Id. at 9. The ESU for Oregon Coast coho salmon, a candidate species, also includes the area, and the "other anadromous species that have candidate status and are located within or downstream of the project area include sea run cutthroat, chinook salmon and chum salmon." Id. at 10.

The EA referred to the Nestucca Watershed Analysis prepared by BLM and the U.S. Forest Service in October 1994 for a description of water quality in the affected environment and to a 1987 botanical inventory along the Nestucca River and a field inventory of riparian zones. The riparian area design features in the EA were developed from the field inventory. Id.; see id. at 16-17.

The BLM EA stated that it focussed on the following issues:

> 1. What are the impacts of the proposed project upon those species listed, proposed or candidates under the Endangered Species Act, identified as Survey and Manage Species or Species of Concern under the Bureau's Sensitive Status Species Policy; and/or their habitats.
>
> 2. What are the impacts of the proposed project upon water quality from sediment input to streams, and of chemical contamination associated with machinery and asphalt?

3. What are the impacts of the proposed project to aesthetic qualities reflected in the objectives of the Back Country Byway and other recreation experiences.

4. What are the impacts of the proposed project to recreation associated with limiting access or road closure for work needs.

5. What is the likelihood of getting an increase in people as a result of better driving conditions and what are the impacts of the proposed project on recreation and the analysis area (various river activities, recreation facilities, garbage, vandalism) if an increase actually resulted.

(EA at 10-11.)

The EA described alternatives designed to address these issues and meet the purposes of the project. The proposed action (set forth as the first three paragraphs of the BLM Decision Record above) included design features for reducing wildlife disturbance; construction practices; controlling sediment; repairing road-fill failure; paving a 2.6 mile gravel section of the Nestucca River road; storing and using excavated material; chip-sealing potholes and road surfaces; washing asphalting machinery and handling hazardous substances; repairing, replacing, and adding culverts; improving fish passage and habitat; conserving vegetation in riparian areas; placing large pieces of wind-thrown wood in riparian areas; adding flumes to some culverts; replacing guard rails; and detouring traffic during construction. In addition to the alternative of undertaking none of the proposed action, BLM considered two alternatives that were the same as the proposed action, except that fish passage through certain culverts would be addressed differently, and listed three alternatives that were considered but not analyzed further. (EA at 11-20.)

The EA addressed the environmental consequences of the proposed action. Although no physical modification of marbled murrelet or northern spotted owl habitat would occur, the EA stated that the increased potential for noise disturbance would be likely to adversely affect these species, based on a Biological Opinion from FWS, and may affect but would not likely adversely affect the northern bald eagle. This disturbance would result from noise levels above ambient levels within 0.25 miles of suitable habitat for the marbled murrelet or northern spotted owl. (EA at 21-22.) 4/ Impacts on five "survey and manage" and four "special status" species

4/ The EA quoted from the Mar. 3, 1997, FWS Biological Opinion (1-7-97-F-121) issued to BLM District Managers and the Forest Supervisor of the Siuslaw National Forest entitled "Formal and informal consultations on Fiscal Year 1997 projects within the Oregon Coast Province which would disturb bald eagles, northern spotted owls, and marbled murrelets during critical nesting periods."

were expected to be minimal or negligible. Four species of sensitive birds and two species of sensitive mammals would be expected to avoid the disturbance. Id. at 22-23.

The EA stated that the effects of the release of sediment and creation of turbidity on Oregon Coast steelhead trout and on Oregon Coast coho salmon were likely to adversely affect these species but not jeopardize their continued existence, based on a "Biological Assessment summarizing habitat data from the main Nestucca and Elk Creek (Baseline indicators) following Level One guidance." Id. at 23. Effects on candidate species of fish—e.g., cutthroat trout and chinook salmon—were expected to be similar. Id. Sediment would be increased in the short term as a result of replacing culverts, hauling waste material, and repairing slumps but would be reduced in the long term—and fish passage would be enhanced—by the project. Id. at 24-25. Water quality would also be benefitted by a reduction in sediment and landslides. The beneficial effects of reducing sediment were rated as low from paving the graveled section of the road and as high from stabilizing sidecast failures. There would be some short-term adverse impacts from the construction phase. Id. at 25. "Because of the short duration and relatively small quantities of sediment expected to result from these actions, these adverse effects are rated as low." Id. at 26.

The proposed action was not expected to have any impact on vegetation in the riparian reserves. It would help maintain and restore three ACS objectives and was not expected to retard restoration and maintenance of six others. Id. at 26. 5/ As impacts on visual quality and recreation,

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5/ "Actions proposed within the Riparian Reserves would help to maintain and restore the following ACS objectives (numbered as they appear in the ACS)[:] (3) the physical integrity of the aquatic system, including shorelines, banks, and bottom conditions; (4) water quality necessary for the support of healthy riparian, aquatic, and wetland ecosystems; and (5) the sediment regime under which aquatic ecosystems evolved. The proposed action is not expected to retard restoration and maintenance of the following ACS objectives: (1) the distribution, diversity, and complexity of watershed and landscape-scale features to ensure protection of the aquatic systems to which species, populations and communities are uniquely adapted; (2) spatial and temporal connectivity within and between watersheds; (6) in-stream flows sufficient to create and sustain riparian, aquatic, and wetland habitats and to retain sediment, nutrient, and wood routing; (7) the timing, variability, and duration of floodplain inundation and water table elevation in meadows and wetlands; (8) the species composition and structural diversity of plant communities in riparian areas and wetlands to provide adequate summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of coarse woody debris sufficient to sustain physical complexity and stability; and (9) habitat to support well-distributed populations of native plant, invertebrate, and vertebrate species that are riparian-dependent."
Id. at 26-27.

the EA stated that in the short term the project would create fresh cut banks and fill slopes and sterile-appearing slopes but in the long term it would provide "a safer, more comfortable drive through the area which will allow users more opportunity to view and enjoy the scenic values of the area." Id. at 27. Whether population growth in the area combined with a smoother road surface would result in increased traffic volume and human use of the area could not presently be quantified, the EA stated. Id.

The EA also reviewed the environmental consequences of the no-action alternative and the two other alternatives on wildlife, fisheries, and water quality. Id. at 28-30.

In the cumulative effects section of the EA, BLM said the cumulative effects of road improvements by various Federal agencies and counties "may be more use of the roads by family and tourist vehicles because of the improved road quality" and that in turn "may potentially lead to enhanced recreation use along the Nestucca Corridor." (EA at 31.) "Whether this would happen is not certain and cannot presently be quantified," BLM stated.

The cumulative effects of the road improvement projects listed—as well as of timber sales and associated road construction and of road obliteration activities—"were analyzed by considering the effects on water quality of all the known and anticipated projects occurring in the Nestucca watershed during the 1997-98 time period." Id.

> All of these projects have the potential to affect water quality through suspended sediment and turbidity increases, or increased water temperature. * * * The effects * * * will accumulate as one moves downstream. The overall effect is an increase in water temperature during the summer months, and an increase in suspended sediment concentration and turbidity, especially during major winter storms.

Id. BLM concluded:

> The impacts of these changes on the designated beneficial uses, which are public domestic water supply, industrial water supply, irrigation, livestock watering, water contact recreation, aesthetic quality, boating, resident fish and aquatic, salmonid spawning and rearing, anadromous fish passage, fishing, wildlife, hunting, and hydropower, are unknown and cannot be quantified for this assessment.

Id.

The EA stated that formal consultation had taken place with FWS in accordance with regulations under section 7 of the ESA concerning the northern spotted owl, the marbled murrelet, and the northern bald eagle and that formal conferencing with the National Marine Fisheries Service

was "ongoing on projects and proposed actions of this type in the ESU of Oregon Coast Steelhead and coastal coho salmon." Id. at 32.

The EA listed six mitigation measures, e.g., hydro-mulching of cut-and-fill slopes, dust abatement near recreation sites, and three means of reducing inconvenience to traffic while the project was being carried out. Id. at 33.

The EA includes an inventory of culverts on the Nestucca River and Bible Creek access roads (Appendix 1), and a survey of anadromous fish and fish habitat associated with the culverts involved in the project (Appendix 2).

EA No. OR 086-97-11 stated that the two bridges on the Nestucca River access road need to be replaced

> to meet current loading standards. Logging and heavy construction equipment exceed the bridge capacity on a continual basis. The Nestucca Access Road was converted to a two lane road with a 20 foot wide asphalt running surface in the late 1980's except for one remaining section approximately 2.8 miles in length. The widening and paving project has increased the average speed on the road[,] creating hazardous conditions when the increased traffic load and higher speeds are suddenly constricted to a one-lane bridge and these bridges sustained damage during the flood of 1996 and have had a history of scouring problems associated with big storm events. Usage of the area has increased with population increases and as a result of advertising the area through the State Scenic Waterways designation and BLM's National Back Country Byway program.

(EA at 2.)

The EA stated that the issues posed by replacing the bridges were the effects on anadromous fisheries, on sensitive species, and on public safety. The effect on traffic of closing the road while the bridges were being replaced was also identified as an issue. Id.

The proposed action (set forth as the final paragraph of the Decision above) and eleven design criteria were described. Id. at 3. The no-action alternative discussion stated the bridges would continue to exist until no longer safe and repair of the damage they sustained in 1996 would still need to be accomplished. Two other alternatives—widening the existing bridges and providing temporary bridges—were listed as "considered but not analyzed further." Id. at 4.

The discussion of the affected environment and the consequences to the environment briefly mentioned the water quality, fisheries, wildlife, and recreational dimensions described in the road restoration EA. In addition, the EA stated that replacing the bridges would "contribute greatly"

to public safety. Closing the road for construction would cause some loss of income from the Alder Glen recreation site and might cause a decrease in traffic, the EA stated. Id. at 4-5.

This EA referred to the road restoration EA for a discussion of cumulative effects. Id. at 5.

Attached to the EA was a BLM biological evaluation stating that disturbance from the proposed bridge replacements would be likely to adversely affect the marbled murrelet between April 1 and August 5 but "work occurring between August 6 and September 15 and adhering to daily time restrictions (working from 2 hours after sunrise until 2 hours before sunset)" would not be likely to adversely affect the species. (Evaluation at 2.) The project would have no effect on the northern spotted owl or the northern bald eagle. The evaluation included two suggested measures designed to mitigate disturbance of the murrelet.

The FWS comments on the draft EA's iterated its concern that "cumulative impacts to biological resources from sediment loading, disturbance and fragmentation of riparian reserves, and increased recreation could be significant." They continued:

> Unfortunately, the [draft EA's] conclude that the cumulative effects of these projects are unknown and cannot be quantified for these assessments. In the absence of an integrated NEPA process that considers the effects of all these projects together, or without careful and coordinated cumulative effects analysis, we are unable to concur that the cumulative effects of the various projects identified within the Nestucca watershed will be insignificant. As a result, we do not believe the Draft EAs, in their present form, support a Finding of No Significant Impact (FONSI). * * * In the absence of [a cumulative effects analysis coordinated with FHA] * * * we recommend that the BLM and [FHA] coordinate to develop a monitoring program that feeds back into project implementation to ensure that significant cumulative impacts are avoided. For example, with respect to sediment load, we recommend that [FHA] and the BLM work together to:
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> a) develop thresholds of significance for turbidity and other parameters that measure sediment loading;
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> b) develop and implement a monitoring protocol to measure these indicators over appropriate spatial and temporal scales; and
>
> c) develop an implementation schedule for all potentially sediment producing phases of planned projects that uses contemporaneous monitoring data to

> ensure turbidity and other parameters do not reach the critical thresholds established at the outset. [6/]

Appellants also commented that the conclusion of the draft EA's concerning impacts on water quality "does not constitute adequate analysis of the critical issue of cumulative effects":

> The Nestucca River segment adjacent to this project (Powder Creek to headwaters) is identified as having a sediment problem in the 303(d) List (DEQ's [Oregon Department of Environmental Quality] Water Quality Limited Waterbodies, July 1996). This data should have triggered a careful analysis of the extent of additional sediment impacts expected from the proposed projects.
>
> It is critical to properly address cumulative impacts to water quality due to the importance of the Nestucca River for at-risk salmon runs. The Nestucca River has been identified in the Northwest Forest Plan as a Key Watershed critical for maintaining anadromous salmonids, including Coastal Coho and Steelhead. The Governor's Coastal Salmon Restoration Initiative (CSRI) also includes an emphasis on restoration and protection of Key Watersheds. [7/]

The BLM's Supplementary Cumulative Effects Analysis

In response to these comments, BLM prepared an additional cumulative effects analysis which the Area Manager took into account in making his decision. (Decision at 6.) This analysis set out the CEQ definition of cumulative effects in 40 C.F.R. § 1508.7, 8/ and listed several related road projects in the Nestucca River watershed. It reviewed the cumulative effects on water quality and aquatic habitat, fisheries, human use, wildlife, and vegetation. Id. at 6-12.

The additional analysis repeated the EA's statement that the impacts of increased water temperature and turbidity could not be quantified but concluded that these short-term impacts would not have a significant effect on water quality based on the environmental analyses that had been done for the other proposed Federal actions in the watershed. Id. at 7. It stated

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6/ Letter of July 30, 1997, from Russell D. Peterson, State Supervisor, FWS, to Dana Shuford, Area Manager, Tillamook Resource Area, BLM, at 3-4.
7/ Letter of July 18, 1997, from the Coast Range Association, Friends of the Nestucca, and Oregon Natural Resources Council, to Dana Shuford, Area Manager, Tillamook Resource Area, BLM, at 2.
8/ "Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

that cumulative effects on salmonids also could not be quantified but anticipated that separation of the proposed projects in time and space would preclude impacts from turbidity that would jeopardize their existence. Timing of the in-stream work during periods of low flow and use of measures such as silt fences should localize turbidity and reduce its impacts. Id. at 8. It referred to studies showing that juvenile fish tend to acclimate to waters with low turbidity and to avoid waters with high turbidity and predicted that turbidity levels from the proposed projects would be lower than those of a recent FHA project in the area that did not result in turbidity that would cause avoidance. Id. at 9. It stated that the proposed projects are expected to benefit fisheries because replacing culverts would provide access to presently-inaccessible habitats and stabilizing slumps would prevent future sedimentation. Id.

The additional analysis acknowledged that improving these and other roads in the upper Nestucca River watershed may increase use of the roads, and increased use could result in more fishing, more accidents, and more garbage dumping, and stated: "The amount of increase in people and vehicles if any is unknown and any effects related to that increase cannot presently be quantified." Id. at 10. Impacts on wildlife, particularly the spotted owl and the marbled murrelet, would be from disturbance rather than habitat modification, the analysis stated, but the cumulative impacts from the road projects and other noise-generating projects were judged insignificant because most of the habitat where the projects would be carried out is of marginal quality and the projects are separated enough in space and time that they would not repeatedly disturb the same areas of habitat. Id. at 11. The chief concern for vegetation, the analysis stated, would be the introduction of non-native species, e.g., by machinery, and this impact can be mitigated. Because native plants have already been removed from the roadways where these projects would be carried out, "old-growth communities are not in peril." Id. at 12.

BLM's August 26, 1997, Decision

BLM's August 26, 1997, Decision stated that it would implement the proposed actions "largely as described in the EAs, but with several additions * * * clarified later in this document." (Decision Record at 3; see id. at 13-16.) The Decision explained that the roads were arterial roads whose "function is to act as a collector to other forest roads, and [an arterial road] usually connects with public highways or other arterial roads. * * * The intent of the arterial road is not to be a segment of a primary through-route." Id. at 3 n.1. The Area Manager said his decision would be an initial step in implementing transportation management objectives set by the RMP and the ACS. Id. at 4. "The transportation system and management activities were addressed programmatically in the Salem District's Resource Management Plan/EIS [Environmental Impact Statement]," the Decision stated. "[T]his Decision is one of many site-specific project activities intended to implement the intent described in the RMP's Record of Decision." Id. at 6. The intent of the Decision was to maintain the roads to serve their existing uses and as a backup route "in the event of

emergency situations and/or road failures on State Highways." Id. at 4. The intent was also to reduce maintenance costs and repair damage done by the 1995-96 winter storms. Id. at 4-5.

The BLM Decision stated the proposed actions would be consistent with the ACS objectives of maintaining and restoring the physical integrity of the aquatic system, the water quality necessary for healthy ecosystems, and the sediment regime under which aquatic ecosystems evolved. Id. at 12. The proposed actions were "not expected to retard restoration and maintenance of" six other ACS objectives. Id. at 12-13.

The Decision stated that the proposed actions and design features, as supplemented by the Decision, would be implemented "over two operating seasons to the extent [BLM] can reasonably do so in order to reduce sedimentation and the cumulative effects of sedimentation in any one summer season." Id. at 17.

The Decision concluded that an EIS for the purposes of analyzing cumulative impacts was not warranted because "each of the project[s] was separately planned and would happen regardless of approval of the others" and because

> NEPA requires a cumulative effects analysis if separate actions combine to create larger impacts on the local environment than the summation of their individual impacts. A combined analysis such as an EIS is required if the several actions take place within a short time frame and if each project results in a significant impact on the quality of the human environment. We have completed the cumulative impacts analysis. I do not consider that the individual projects would contribute significant impacts when considering the design features of our projects and those expected of the projects proposed by the Federal Highway Administration. Therefore, an EIS or supplement to the existing RMP/FEIS is not necessary on the basis of the combined actions.

Id. Therefore, the Decision concluded, the selected actions, as supplemented, would not have a significant impact on the quality of the human environment and were within the range of actions described in the September 1994 final EIS for the RMP. Id.

Appellants' Arguments

Appellants argue that BLM violated NEPA for several reasons. First, BLM "failed to disclose foreseeable impacts from increased traffic." (Statement of Reasons (SOR) at 2.) Appellants also argue that BLM did not adequately analyze the cumulative impacts of these projects combined with other proposed, recently-completed, and in-progress road projects on water quality, traffic, or road usage. (SOR at 4, 5.) If BLM believed information about foreseeable traffic impacts or about impacts on water quality was incomplete or unavailable, it was required to disclose this under

40 C.F.R. § 1502.22. (SOR at 4, 5.) Issuing separate EA's for these projects constitutes improper segmentation of related actions, Appellants argue, and combining the Decision Record and FONSI does not satisfy the requirement that related actions be evaluated in a single EA or EIS. Id. at 8; see 40 C.F.R. § 1502.4(a). BLM failed to adequately disclose landslide risks from the projects, Appellants argue, id. at 11-12; failed to consider whether the projects are likely to be highly controversial, id. at 15, see 40 C.F.R. § 1508.27(b)(4); failed to consider significant impacts, e.g., impacts from employing the roads as alternative routes in the event of emergencies, impacts to riparian vegetation, and growth-inducing impacts, id. at 15-16; and failed to consider alternatives that would meet the stated purposes of the project, e.g., "installing warning signs, speed control bumps, warning lights" and other techniques that would meet safety concerns. Id. at 17. Finally, Appellants argue BLM violated NEPA "by preparing an EA instead of a full EIS * * * ignor[ing] or minimiz[ing] significant impacts." Id. at 18.

In addition, Appellants contend that the projects are inconsistent with the RMP; "major upgrades of the road such as road widening or replacing single lane bridges with double lane bridges * * * are not identified in the RMP nor are their impacts described or assessed." Id. at 13. The projects do not maintain or restore riparian resources and therefore fail to meet Objectives 3, 4, 5, 8 and 9 of the ACS. Id. at 14; see note 5 supra. "The BLM is paying for these projects with flood relief funds even though the bulk of the project is inconsistent with the type of work that these funds were made available for * * *." Id. at 16. The BLM violated NEPA by implementing parts of the Decision before public review periods ended. Id. at 18. The BLM should resubmit its proposal to the FWS for evaluation under the ESA, Appellants argue, because BLM did not tell FWS it intended to "turn this road into an alternate through-route" and this plan constitutes new information that may affect the species in a way not previously considered. Id. at 20. In concluding their SOR, Appellants argue that the Back Country Byway program, of which the Nestucca Road is a part, "has never been analyzed properly pursuant to NEPA." Id. at 20-21.

In their Notice of Appeal and Petition for Stay, which Appellants incorporate by reference in their SOR, they request that we reverse BLM's Decision and order that an EIS or an adequate combined EA be prepared. (SOR at 2; Notice of Appeal at 2.)

In subsequent pleadings, Appellants argue that BLM must obtain a permit from the State of Oregon Department of Fish and Wildlife before repairing or replacing culverts. (Submission of Final Argument, filed Apr. 17, 1998, at 2; Response to May 28, 1998, BLM Petition for Release of Stay, filed June 5, 1998, at 4.)

The BLM Response

In response, BLM states it anticipates an inconsequential increase in traffic that would be attributable to increased population and an attendant increase in demand for access to recreational areas rather than to

the projects. It states it prepared a supplemental cumulative effects analysis in response to concerns about the adequacy of the analysis in the EA's. "Given the scope of the action, the effects analysis in [EA No. OR 086-97-09 at] 20-31 and [the Decision at] 6-12 was adequate to make an informed, reasoned decision," BLM states. (Response at 2.)

The BLM believes the bridge replacement and road restoration projects are independent. Carrying out the road restoration was planned for the year following replacement of the bridges but was accelerated in response to Congressional indications that it expected the appropriated funds should be spent promptly. That does not mean the projects are connected actions, however. Id. at 3.

The BLM states that the interdisciplinary team that analyzed the road restoration project did not identify landslides as a significant issue and, "[i]n fact, the upper Nestucca River area is not particularly prone to landslides." The project is designed to reduce landslides and sedimentation by stabilizing slump areas. Id. at 4.

The projects are consistent with the 1995 RMP and with the 1996 BLM Western Oregon Districts Transportation Management Plan, BLM states. Id.; see Response Exhibit 1. The BLM contends its Decision does not entail creating a "through-route" or amount to major upgrading of the road. Id. at 5. The projects are also consistent with the ACS, BLM states. Id.

Although there has been some controversy about whether the projects were part of a plan to create a through-route, BLM does not agree that the effects discussed in the EA's or the Decision Record were highly controversial. Nor have Appellants presented any evidence that the effects discussed under the issues set forth in the EA's were wrongly predicted. Id. at 5-6.

The BLM states that the source of funding for the projects is "outside the scope" and that it has acted with fiscal integrity in deciding to repair roads and bridges that were damaged in the 1995-96 storms. Id. at 7.

The safety alternatives proposed by Appellants would not meet the purpose of bringing the bridges up to loading standards or repairing flood damage to them, BLM states, and were not relevant to the principal purposes of restoring the roads. The BLM believes it considered an adequate range of alternatives. Id.

The BLM did not prepare an EIS, it states, because the EA's did not reveal any environmental effects that met the definition of significance in context or intensity. See 40 C.F.R. § 1508.27. Id.

The BLM acknowledges it replaced three culverts and did some asphalt patching to prevent anticipated winter damage. These actions were consistent with the RMP and did not constitute an irreversible commitment of resources in violation of NEPA, BLM states. Id. at 7-8.

Appellants have not presented any evidence that the effects of the projects on special status species would be other than as considered in the EA's and the Decision, BLM argues, and therefore it does not need to reinitiate consultations with FWS under the ESA. Id. at 8. The projects are consistent with maintenance of the Back Country Byway, designated in 1989, that was called for in the RMP, BLM states.

BLM argues in conclusion that the Appellants have shown no errors in its Decision and that the EA's "demonstrate that repairs are needed and that potential relative harm could result to humans and the natural environment if the actions are not implemented." Id. at 9.

In response to our May 1, 1998, Order inquiring whether the work it proposes to do requires a permit from the Oregon Division of State Lands (DSL), BLM states that it has determined, in consultation with DSL, that a permit is not required.

Discussion

We have frequently said that the environmental analysis process under NEPA is designed to provide decisionmakers with adequate information to make a decision, not to ensure a decision that is most solicitous of environmental conservation. The issue in this case is not whether these projects are advisable but whether the decisionmaker was sufficiently advised to make a reasoned decision. Missouri Coalition for the Environment, 124 IBLA 211, 223 (1992). As stated in State of Wyoming Game and Fish Commission, 91 IBLA 364, 367 (1986):

> The National Environmental Policy Act (NEPA) is essentially procedural rather than substantive. See Strycker's Bay Neighborhood Council v. Karlin, 444 U.S. 223 (1980); Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 558 (1978); In re Otter Slide Timber Sale, 75 IBLA 380 (1983). NEPA proceeds from a recognition that it is inevitable that Government actions will sometimes occur which may have significant negative impacts on certain environmental values. What is critical is that the Government officials determining whether those actions should go forward have a full and complete grasp of the possible consequences of the activity in order that they may take steps to ameliorate adverse impacts to the extent possible, and, if certain impacts cannot be avoided, decide the advisability of proceeding and thereby accepting such impacts.
>
> The fact that NEPA is essentially procedural, however, does not lessen the obligations it imposes to develop a record which fully discloses the rationale and basis for the decision, adequately explores the reasonably foreseeable impacts, and fairly analyzes alternatives to the proposed activity. Indeed, the opposite is true. Precisely because the NEPA mandate is primarily procedural, it is absolutely incumbent upon agencies

> considering activities which may impact on the environment to assiduously fulfill the obligations imposed by NEPA.

In preparing an EA, which assesses whether an EIS is required under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (1994), an agency is required to take a "hard look" at the problem addressed, identifying relevant areas of environmental concern, and make a convincing case that the environmental impact is insignificant. Maryland-National Capitol Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973); Owen Severance, 118 IBLA 381, 392 (1991); Yuma Audubon Society, 91 IBLA 309, 312 (1986).

[1] We have also frequently said that we will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. Southern Utah Wilderness Alliance, 140 IBLA 341, 348 (1997); The Ecology Center, Inc., 140 IBLA 269, 271 (1997); Blue Mountains Biodiversity Project, 139 IBLA 258, 265-66 (1997). A party challenging the determination must show that it is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Southern Utah Wilderness Alliance, supra, at 348; The Ecology Center, supra, at 271; Hoosier Environmental Council, 109 IBLA 160, 173 (1989); United States v. Husman, 81 IBLA 271, 273-74 (1984). The ultimate burden of proof is on the challenging party. G. Jon and Katherine M. Roush, 112 IBLA 293, 298 (1990); In Re Blackeye Timber Sale, 98 IBLA 108, 110 (1987). Mere differences of opinion provide no basis for reversal. Id.; Glacier-Two Medicine Alliance, 88 IBLA 133, 144 (1985). See Cady v. Morton, 527 F.2d 786, 796 (9th Cir. 1975).

BLM's NEPA Handbook, which is binding on agency officials, Utah Wilderness Association, 134 IBLA 395, 397 n.3 (1996), states that an environmental assessment

> must describe and analyze the environmental impacts of the proposed action and each alternative considered. * * * The analysis of impacts must address direct, indirect and cumulative impacts on all affected resources of the human environment, including critical elements (see Appendix 5). * * * The anticipated effectiveness of mitigation measures and any direct, indirect, and cumulative impacts that remain after the application of all mitigation measures, i.e., residual impacts, must be described and analyzed. [9/]

The NEPA Handbook includes the CEQ definition of cumulative effects, note 8 supra.

9/ BLM Manual, H-1790-1, Rel. 1-1547, 10/25/88, Ch. IV-C.1.a.(3)(a), (e).

Federal court decisions applying this definition have required BLM to analyze together the impacts of 60 or more functionally and economically independent placer mines that had greatly increased sediment loads in Birch Creek in Alaska. Sierra Club v. Penfold, 664 F. Supp. 1299, 1302-1304 (D. Alaska 1987), aff'd, 857 F.2d 1307, 1320-21 (9th Cir. 1988). The cumulative impacts of multiple timber sales in the Tongass National Forest were also required to be analyzed together. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312-1313 (9th Cir. 1990).

Recently, in Neighbors of Cuddy Mountain v. U.S. Forest Service, No. 97-35654 (9th Cir. Mar. 4, 1998), the U.S. Court of Appeals for the Ninth Circuit stated:

> To "consider" cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service's decisions, can be assured that the Forest Service provided the hard look that it is required to provide. * * * General statements about "possible" effects and "some risk" do not constitute a "hard look" absent a justification regarding why more definitive information could not be provided.

In Cuddy Mountain, three other timber sales were proposed for the area. Plaintiffs argued the cumulative impact analysis for the sales was inadequate in describing the combined effect of the sales on reducing old growth habitat. The Forest Service EIS stated that it was "not known" to what degree isolation of pileated woodpecker populations "may be occurring," and acknowledged "[t]here is some risk that the remaining mature and old growth forests on Cuddy Mountain may not be adequate in size, if isolated from adjacent suitable habitat, to maintain the dependent species." A supplemental EIS proposed monitoring to determine the effects of timber harvests on old-growth dependent species. The court noted the Forest Service failed to mention the number or percentage of old-growth trees that would be destroyed by the three other sales in the area and whether those sales would affect the same home ranges as the proposed sale, and indicated it did not consider this would be impractical. See Island Empire Public Lands Council v. United States Forest Service, 88 F.3d 754, 764 (9th Cir. 1996); Kleppe v. Sierra Club, 427 U.S. 390, 410-14 (1976).

Our decisions confirm the importance of a careful analysis of direct, indirect, and cumulative impacts. Sierra Club, 111 IBLA 122, 134-35 (1989); Colorado Environmental Coalition, 108 IBLA 10, 16-18 (1989); John A. Nejedly, 80 IBLA 14, 18-19, 24-25 (1984).

In this case BLM has not "completely failed to describe or assess any cumulative effects," and its Decision does not fail to "address these issues," as Appellants argue. (SOR at 6, 7.) The BLM selected appropriate boundaries for its analysis of cumulative effects, i.e., the Nestucca River watershed, and an appropriate time frame, i.e., projects occurring during 1997-98. It identified the resources that would be subject to cumulative

impacts and the various projects that would cause them. Although it stated that many impacts could not be quantified, we believe that in this case the decisionmaker was not deprived of adequate information upon which to base a decision. Qualitative descriptions of effects or categorization of impacts as high, medium, or low, as in this case, are acceptable analysis of environmental consequences if not much quantitative information is available.

We set forth the environmental analysis for these projects at some length above because we believe it demonstrates that "a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable" and that BLM correctly determined an EIS was not necessary. We believe BLM's analysis of the environmental impacts from these projects was comprehensive and its conclusion that these impacts, as the projects are designed, are not significant, is correct. We are especially concerned about effects on threatened and sensitive species and on salmonid habitat, but we think BLM's determination that the negative effects would be short-term and insignificant and that the long-term effects would be beneficial is reasonable. We are not persuaded that BLM overlooked significant impacts, e.g., from landslides, increased traffic, or potential growth, or improperly concluded that impacts on riparian vegetation would not be significant. The fact that these projects may be controversial does not automatically make their impacts significant. Glacier Two-Medicine Alliance, supra, at 143-44 (1985).

In sum, we conclude Appellants have not met their burden of showing that BLM's FONSI is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

We do not believe BLM has improperly segmented its analysis of these projects under the criteria outlined in Sierra Club, supra, at 134, i.e., whether the highway segment analyzed has logical termini; whether the segment has substantial independent utility; whether construction of the segment forecloses the opportunity to consider alternatives; and whether construction of the segment irretrievably commits Federal funds for closely related projects. It is apparent from the record that replacement of the bridges could take place independently of restoring the roads and that restoring the roads does not depend on replacing the bridges. That is, the projects are not connected actions that should have been analysed in a single document. See 40 C.F.R. § 1508.25(a)(1).

As for Appellants' non-NEPA arguments, in our view Appellants may not raise the issue whether BLM has designated the appropriate funds to expend for these projects. See generally Gifford H. Allen, 131 IBLA 195, 205 (1994); In re Thompson Creek Timber Sale, 81 IBLA 242, 243-44 (1984).

We are satisfied the projects are consistent with the RMP and the ACS.

Whether BLM conducted a proper environmental analysis of its 1989 Back Country Byway dedication cannot be included in an appeal of its decision about these projects; the time for appealing that dedication has passed.

Although we caution BLM about proceeding with parts of a project under appeal before the appeal is resolved, we do not find the culvert replacement and asphalt crack patching in 1997 were an irretrievable commitment of resources.

Nor do we find BLM must consult again with FWS about impacts of the projects on threatened or other species, or that it must obtain a permit from the State of Oregon for the work involved in these projects.

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's August 26, 1997, Decision is affirmed.

_____
Will A. Irwin
Administrative Judge

I concur:

_____
James L. Burski
Administrative Judge